



# MIAMI BEACH

## CITY OF MIAMI BEACH CERTIFICATION OF CONTRACT

TITLE: PURCHASE OF PIPE AND FITTINGS, CAST DUCTILE IRON AND CAST GRAY IRON.

CONTRACT NO.: 35-05/06

EFFECTIVE DATE(S): One (1) year from date of execution of this Contract with two (2) additional one (1) year renewal options

SUPERSEDES: N/A

CONTRACTOR(S): HD Supply Waterworks, Ltd.

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- A. AUTHORITY - Upon affirmative action taken by the City Commission and City Clerk of the City of Miami Beach, Florida, on December 4, 2006, this Contract has been approved for award and execution by the City of Miami Beach Florida and HD Supply Waterworks, Ltd.
- B. EFFECT - This Contract was entered into for the purchases of pipe and fittings, cast ductile iron and cast gray iron, on an "as needed basis". Therefore, all required services shall be made under the terms, prices and conditions of this Contract, Invitation to Bid (ITB) No. 35-05/06, all addenda thereto, and CONTRACTOR'S proposal in response thereto.
- C. ORDERING INSTRUCTIONS - All standing orders shall be issued in accordance with the City of Miami Beach Procurement Division policies and procedures, at the prices indicated, exclusive of all Federal, State and local taxes.
- All Standing Orders shall reference the City of Miami Beach Contract Number (35-05/06).
- D. CONTRACTOR PERFORMANCE - City of Miami Beach Public Works Director, or his designated representative shall report any vendor failure to perform according to the requirements of this Contract to the Procurement Director 305-673-7490.
- E. INSURANCE CERTIFICATE(S) - CONTRACTOR shall file Insurance Certificates, as required, and they must be signed by a Registered Insurance Agent licensed in the State of Florida and approved by the City of Miami Beach Risk Manager.
- F. ASSIGNMENT AND PERFORMANCE - Neither this Contract nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONTRACTOR shall not subcontract any portion of the work required by this Contract.

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CONTRACTOR represents that all persons delivering the services required by this Contract have the knowledge and skills, by either training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Work and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONTRACTOR shall perform its duties, obligations, and services under this Contract in a skillful and respectable manner. The quality of CONTRACTOR's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

- G. SERVICE EXCELLENCE STANDARDS – Excellent Customer Service is the standard of the City of Miami Beach. As a contract employee of the CITY, CONTRACTOR'S employees will be required to conduct themselves in a professional, courteous and ethical manner at all times and adhere to the City's Service Excellence standards. Training will be provided by the City's Organizational Development and Training Specialist.
  
- H. PUBLIC ENTITY CRIMES - In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the CITY, and may not transact any business with the CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by Contractor shall result in cancellation of the CITY purchase and may result in Contractor debarment.
  
- I. INDEPENDENT CONTRACTOR - CONTRACTOR is an independent contractor under this Contract. Services provided by CONTRACTOR pursuant to this Contract shall be subject to the supervision of CONTRACTOR. In providing such services, neither CONTRACTOR nor its agents shall act as officers, employees, or agents of the CITY. This Contract shall not constitute or make the parties a partnership or joint venture.
  
- J. THIRD PARTY BENEFICIARIES  
Neither CONTRACTOR nor CITY intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a claim against either of them based upon this Contract.

The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Contract.

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- K. NOTICES - Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

For CITY:

Accounts Payable  
1700 Convention Center Drive  
Miami Beach, Florida 33139

For CONTRACTOR:

HD Supply Waterworks, Ltd.  
Attn: Paul B. Thomas  
10810 N.W. 92 Terrace  
Suite # 108  
Miami, FL 33178  
305-477-2383

- L. MATERIALITY AND WAIVER OF BREACH - CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth in this Contract, and the documents incorporated hereto is substantial and important to the formation of this Contract and, therefore, is a material term hereof.

CITY's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

- M. SEVERANCE - In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

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- N. APPLICABLE LAW AND VENUE - This Contract shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **By entering into this Contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to, or arising out of the Contract. CONTRACTOR shall specifically bind all subcontractors to the provisions of this Contract.**
  
- O. AMENDMENTS - No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the CITY and CONTRACTOR.
  
- P. All documents shall be executed satisfactorily to the CITY and until Insurance Certificates have been filed and approved, this Contract shall not be effective.
  
- Q. The Contract Documents which comprise the entire Agreement between CITY and CONTRACTOR are attached to this Contract and made a part hereof, and consist of 1.) this Certification of Contract; 2.) the City's ITB and any and all addenda thereto; and 3.) CONTRACTOR'S proposal in response thereto.

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**CERTIFICATION OF CONTRACT**

THIS CONTRACT made this 11<sup>th</sup> day of October 2006, A.D. between the CITY OF MIAMI BEACH, a Florida municipal corporation, hereinafter referred to as CITY, which term shall include its successors and assigns, and

**HD Supply Waterworks, Ltd.**  
**Attn: Paul B. Thomas**  
**10810 N.W. 92 Terrace**  
**Suite# 108**  
**Miami, FL 33178**  
**305-477-2383**, hereinafter referred to as CONTRACTOR

**Estimated Annual Contract Amount: \$150,000.**

IN WITNESS WHEREOF the said CITY has caused this Certification of Contract to be signed by the Mayor of the City of Miami Beach, Florida and its corporate seal to be affixed, attested by the City Clerk of the City of Miami Beach and the said CONTRACTOR has caused this Contract to be signed in its name.

**CONTRACTOR**

Robert Parcher (Seal)

Terry Howell  
President

Terry Howell  
Print Name

**ATTEST:**

P. Thullen  
Asst. Secretary

MATTHEW P. THULLEN  
Print Name

**CITY OF MIAMI BEACH**

By David Dermer  
Mayor

**ATTEST:**

Robert Parcher  
City Clerk

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

David Dermer 1/3/07  
City Attorney Date